

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 45-004-13-1-5-00311-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-09-327-008.000-004
Assessment Year: 2013

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. Nowacki contested the 2013 assessment of his property located at 1533-35 Fillmore Street in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the vacant lot at \$3,800.
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On July 9, 2018, Ellen Yuhan, our designated administrative law judge (“ALJ”), held a hearing on Nowacki’s petition. Neither she nor the Board inspected the subject property.
3. Nowacki appeared pro se. The Assessor appeared by Robert Metz and Joseph E. James, his Hearing Officers. They were all sworn as witnesses.

RECORD

4. The official record for this matter includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; (3) an audio recording of the hearing; and (4) these Findings and Conclusions.¹

BURDEN OF PROOF

5. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year’s

¹ Neither party offered any exhibits.

assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b) and (d).

6. Here, the subject property's assessment remained unchanged from 2012 to 2013. Nowacki therefore bears the burden of proof.

SUMMARY OF CONTENTIONS

7. Nowacki's case:

- a. The subject property is an unbuildable lot in a declining area. The Assessor characterizes the property's neighborhood as static, but each year its assessment has declined. When Nowacki purchased the property, its assessed value was \$3,800. In 2013, the Assessor corrected the property's assessment by reducing its value to \$1,900, clearly indicating the \$3,800 value determined by the PTABOA is inaccurate. The Assessor further reduced the property's assessment to \$900 for 2014 and \$800 for 2015. These continuing reductions strongly indicate that the Assessor made errors in assessing the property for 2012 and 2013. Nowacki requests the Board correct the property's 2013 assessment by reducing it to \$900. *Nowacki testimony.*

8. The Assessor's case:

- a. Although the PTABOA decision reflects an assessment of \$3,800 for 2013, the subject's property record card shows that there was a Form 113 completed that lowered its 2013 assessment to \$1,900. The Assessor recommends the subject property's 2013 assessment remain at \$1,900. *James testimony.*

ANALYSIS

9. Nowacki failed to make a prima facie case for reducing the subject property's 2013 assessment. The Board reached this decision for the following reasons:

- a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.

- b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are "appropriate for determining true tax value." MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property's true tax value, including appraisals prepared in accordance with generally recognized

- appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* For 2013, the valuation date was March 1, 2013. Ind. Code § 6-1.1-2-1.5(a).
- c. Nowacki contends the subject property's 2013 assessment should be \$900, but he failed to present any probative market-based evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
- d. We also give no weight to his claims regarding the subject property's decreasing assessment. Putting aside the fact that the decreasing assessment appears to correspond with his view of the surrounding area as a neighborhood in decline, the Assessor's decision to decrease the subject property's assessment in subsequent years does not prove that its 2013 assessment was incorrect. As the Tax Court has explained, "each tax year—and each appeal process—stands alone." *Fisher v. Carroll Cnty. Ass'r*, 74 N.E. 3d 582 (Ind. Tax Ct. 2017). Evidence of a property's assessment in one year, therefore, has little bearing on its true tax value in another. *See, e.g., Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001); *Barth, Inc. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 805 n. 14 (Ind. Tax Ct. 1998).
- e. Because Nowacki offered no probative market-based evidence to demonstrate the subject property's correct market value-in-use, he failed to make a prima facie case for a lower assessment. Nonetheless, the Assessor asked us to reduce the subject property's 2013 assessment to \$1,900. Although the PTABOA's decision may have subsequently overridden the Assessor's Form 113 valuation, we construe the Assessor's request as a concession. Based on that concession, we find the subject property's 2013 assessment should be \$1,900.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we order the subject property's 2013 assessment reduced to \$1,900.

ISSUED: October 1, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.